

### **REMARKS**

This Application has been carefully reviewed in light of the Final Office Action mailed on July 20, 2006. Claims 81, 84 and 87 have been amended. Claims 83, 86, and 89 have been cancelled. Claims 81, 82, 84, 85, 87, and 88 are pending. Applicants respectfully request reconsideration and favorable action of all pending claims in view of the amendments and the following remarks.

#### **Entry of Amendments**

Amendments to Claims 81, 84, and 87 should be entered because the amendments address objections as to form raised by the Office Action. 37 C.F.R. § 116(b)(1). In addition, there are good and sufficient reasons why the amendments were not made earlier. 37 C.F.R. § 116(b)(3). In particular, the amendments incorporate dependent Claims 83, 86, and 89 respectively into Claims 81, 84, and 87. The reasoning supplied by the Office Action for rejecting these claims indicates that they are in a condition for allowance if rewritten in independent form. Because these dependent claims have already been analyzed, no new search is required.

#### **Claim Rejections - 35 U.S.C. § 112 ¶1**

The Office Action states that Claims 81-89 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Office Action further states that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

The Office Action states that Claims 81, 84 and 87 recite "determining if metric information is required by each criterion," and the specification does not include a clear and precise description which supports the above claim limitation such that a skilled artisan would be convinced that the inventor had possession of the invention at the time of filing the patent application. The Office Action further states that Claims 82, 83, 85, 86, 88 and 89 are rejected for at least being dependent from a rejected base claim.

Applicants respectfully submit that the rejected claims satisfy the written description requirement of 35 U.S.C. § 112, first paragraph. The specification conveys to one of skill in the art that Applicants had possession of the invention as claimed. In particular, the

specification clearly states that whether metric information is required to be requested from agents, in some embodiments, depends on the configurable predetermined selection criteria chosen by, in some embodiments, a user such as a network administrator. For example, the following quote from Applicants' specification clearly describes the limitation of "determining that metric information is required by at least one of the criteria:

The DRP agents are preferably contacted for any type of additional information that the distributed director needs to facilitate a selection of the 'best' service based on its configuration. Examples of metric information that may require the distributed director to contact the DRP agents include DRP round trip time, DRP external metrics . . . ." Page 22, lines 21-23, Page 23 lines 1-3.

Thus, for example, "round trip time" is selected by the user as a criteria for service selection, it is determined that metric information will be requested from agents, in some embodiments. For at least these reasons, Applicants respectfully submit that Claims 81, 82, 84, 85, 87, and 88, are allowable because a clear and precise description exists in the specification which supports the above claim limitation such that a skilled artisan would be convinced that the inventor had possession of the invention at the time of filing the patent application.

#### **Claim Rejections under 35 U.S.C. § 112 ¶2**

Claims 81-89 are further rejected in the Office Action under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. The Office Action states that the term "if metric information is required" in Claims 81, 84 and 87 is a relative term which renders the claim indefinite. The Office Action further states that Claims 82, 83, 85, 86, 88 and 89 are rejected for at least being dependent from a rejected base claim.

Applicants respectfully submit that the claims satisfy the requirements of §112 ¶ 2. Although Applicants do not acquiesce to the correctness of this rejection, Applicants have amended Claims 81, 84, and 87 to remove the "if metric information is required" language, rendering moot this rejection. Favorable action is requested. Applicants note that this change should be entered pursuant to 37 C.F.R. § 1.16(b)(1) at least because it is being made to comply with a requirement of form raised by the Office Action.

**Claim Rejections - 35 U.S.C. §§ 103**

The Office Action rejects Claims 81-89 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,115,752 issued to Chauhan ("*Chauhan*") in view of U.S. Patent No. 6,314,093 issued to Mann et al. ("*Mann*"). Applicants respectfully traverse.

Applicants have amended Claims 81, 84, and 87 to include the limitations of Claims 83, 86, and 89 respectively, which are now cancelled. Claim 81 as amended recites:

comparing the requested metric information of at least one of the criteria with the highest priority for each mirrored service;  
selecting the service with the fastest metric information with respect to the highest priority criterion;  
determining that the metric information of the highest priority criterion is equal for two or more mirrored services and in response comparing the metric information of the criterion with the next highest priority for each mirrored service; and  
selecting the service with the fastest metric information with respect to the next highest priority criterion.

Applicants respectfully submit, and that the Office Action concedes, that the combination of *Chauhan* and *Mann* do not disclose these limitations. In particular, the Office Action concedes that the combination of *Chauahn* and *Mann* "does not disclose comparing the metric information of the criterion with the next highest priority for each mirrored service if the metric information of the highest priority criterion is equal for two or more mirrored services; and selective the service with the fastest metric information with respect to the next highest priority criterion." Although the Office Action concedes these limitations are not disclosed by the combination of *Chauhan* and *Mann*, it nevertheless rejects the claim stating: "it would have been obvious to modify the combination of Chauhan and Mann to include the above claim language for the purpose of reducing latency by including another criterion such as load on a server." But this rejection fails to comply with M.P.E.P. Section 706.02(j) which requires all limitations to be shown in one or more references for a Section 103 rejection. M.P.E.P. 706.02(j) states that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." As a result, to invalidate a claim under §103, all limitations must be found in a combination of references. The Office Action has failed to identify the presence of the above limitation in any cited reference. For at least these reasons, Claim 81 should be allowed as should the claims that depend therefrom. For similar reasons, Claims 84, 85, 87, and 88 should also be allowed.

**Request for Evidentiary Support**

Should a rejection based on any of the above asserted rejections be maintained, Applicants respectfully request appropriate evidentiary support. Additionally, if the Examiner is relying upon "common knowledge" or "well known" principles to establish the rejection, Applicants request that a reference be provided in support of this position pursuant to M.P.E.P. § 2144.03. Furthermore, to the extent that the Examiner maintains any rejection based on an "Official Notice" or other information within the Examiner's personal knowledge, Applicants respectfully request that the Examiner cite a reference as documentary evidence in support of this position or provide an affidavit in accordance with M.P.E.P. § 2144.03 and 37 C.F.R. 1.104(d)(2).

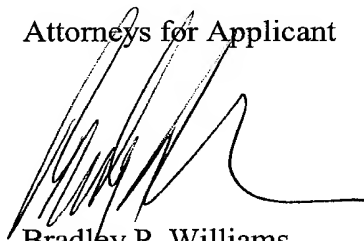
**CONCLUSION**

Applicants have now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, please feel free to contact the undersigned attorney for Applicants.

Applicants believe no fee is due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,  
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